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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1951.

No. 217

BENJAMIN STEIN, RENA STEIN, AND HENRY KUTNER, DOING BUSINESS AS REGLOR OF CALIFORNIA,
Petitioners,

vs.

EXPERT LAMP COMPANY, A CORPORATION,
Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO APPLICATION FOR WRIT OF CERTIORARI.

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INDEX.

	PAGE
Reasons for Denying the Writ	1
Unanimous Decisions by Courts Below	3
Question Presented	3
Statutes Involved	3
Statement of the Case	4
Argument	5
Procedures and Distinctions Between Obtaining a Copyright and a Design Patent	5
Design Patents Only, Not Copyrights, Protect Designs for Articles of Manufacture	6
"Works of Art" under Copyright Law Do Not Apply to Articles of Manufacture Having Mechanical and Utilitarian Aspects, Such As Electric Table Lamps	10
Cases Cited by Petitioner	17
Conclusion	21

TABLE OF CASES.

Adelman, Inc. v. Sonners & Gordon, 21 U.S.P.Q. 218 (D.C.N.Y.)	18
Associated v. Gits, 182 F.(2) 1000 (C.C.A. 7)	8
Baker v. Selden, 101 U.S. 99	1, 2, 13
Bleistein v. Donaldson, 188 U.S. 239	20
In Re: Blood, 23 F.(2) 722 (App. D.C.)	20

Burrow-Giles Lithographic v. Sarony, 111 U.S. 53 ..5, 9, 14

Cavu Clothes v. Squires, 184 F.(2) 30 (C.C.A. 6) 8

Connecticut Paper v. N. Y. Paper, 127 F.(2) 423 (C.C.A. 4) 8

DeJonge & Co. v. Breuker & Kessler Co., 182 F.(2) 150 (C.C.E.D. Pa.) 20

Faris v. Patsy Frocks, 273 F. 900 (C.C.A. 9) 9

Fleischer Studio v. Freundlich, 73 F.(2) 276 (C.C.A. 2) 17

Gold Seal Importers v. Morris-White, 124 F.(2) 141 (C.C.A. 2) 8

Gorham v. White, 81 U.S. 511 ..... 2, 6

Heuter v. Compco, 179 F.(2) 416 (C.C.A. 7) 8

Illinois Watch Case v. Hingeco Mfg. Co., 81 F.(2) 41 (C.C.A. 1) 8

Jackson v. Quickslip, 110 F.(2) 731 (C.C.A. 2) 19

Jones Bros. v. Underkoffler, 16 F.S. 129 (D.C. Pa.) 20

King Feature Syndicate v. Fleischer, 299 F. 533 (C.C.A. 2) 17

King Ventilating v. St. James Ventilating, 26 F.(2) 357 (C.C.A. 8) 9

Magarian v. Detroit Products, 128 F.(2) 544 (C.C.-A. 9) 9

National Automatic v. Automatic Machinery, 111 F. 401 (C.C.A. 1) 8

Neufold-Furst & Co. v. Jay-Day Frocks, 112 F.(2) 715 (C.C.A. 2) 8

Perris v. Hexamer, 99 U.S. 674 15

Phoenix Knitting v. Hygienic, 194 F. 696 (C.C.A. 3) 8

Robertson, Commissioner of Patents v. Cooper, 46 F.(2) 766 (C.C.A. 4) 8

Rose Mfg. Co. v. Whitehouse, 208 F. 564 (C.C.A. 3) 8

Smith v. Whitman, 148 U.S. 674 7

Taylor Inst. Co. v. Fawley-Brost, 139 F.(2) 98 (C.C.-A. 7) certiorari denied, 321 U.S. 785 .....2, 16

Trade Mark Cases, 100 U.S. 82 13

Western Auto Supply Co. v. American National Co., 114 F.(2) 711 (C.C.A. 6) 8

CONSTITUTION OF U. S.

Article I; Sec. 8, Clause 8 .....footnote 13

STATUTES.

Sec. 4929-4933 (35 U.S.C.A. 73)..... 3, 6

35 U.S.C.A. Sec. 75 7

First Copyright Act of May, 1790 11

Present Copyright Act 11

Present Copyright Act title 17, Sec. 1..... 11

Present Copyright Act title 17, Sec. 10..... 12

Present Copyright Act title 17, Sec. 13..... 12

REGULATION.

Sec. 202.8 of the Copyright Office 3, 10

PUBLICATION.

H. A. Howell "The Copyright Law"..... 16

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EXPERT LAMP COMPANY, A CORPORATION,
Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO APPLICATION FOR WRIT OF CERTIORARI.

Reasons for Denying the Writ.

The Petition attempts to raise questions concerning interpretations of statutes, regulations and practices in the Patent Office and Library of Congress, all of which go counter to the long established practice which followed the case of *Baker* v. *Seldon,* 101 U.S. 99, where

this Court pointed out the distinction between copyrights and patents and held that the **object of a copyright is explanation and the object of a patent is use**; stating (page 105)

> "The object of the one is explanation; the object of the other is use. The former may be secured by copyright. The latter can only be secured, if it can be secured at all, by letters patent."

Since 1842, the Patent Office has, after a thorough examination of the prior art, issued design patents, pursuant to the Patent Act of that date and subsequent patent acts, **on articles of manufacture** which embodied new, original and ornamental designs and which involved invention. Petitioner now contends that the Patent Office examination can be circumvented by going directly to the Library of Congress, under the Copyright Laws, to obtain a 56 year monopoly (original term 28 years with a 28 year renewal). The two Courts below rejected Petitioner's contention that it could by-pass the Patent Office for monopolies on articles of manufacture having mechanical and utilitarian aspects, such as electric table lamps.

The Court of Appeals below, in reaching its decision, relied on the decisions of this Court in *Baker* v. *Seldon, supra,* and *Gorham Co.* v. *White,* 81 U.S. 511. These cases eminently support its decision and have been uniformly followed throughout all of the judicial circuits.

There is no conflict in the decision of the Court of Appeals for the Seventh Circuit with that of any other circuit. Certiorari was denied (321 U.S. 785) in the case of *Taylor Instrument Co.* v. *Fawley-Brost* (C.C.A. 7, 1943) 139 F. (2) 98, which involved the same questions here, namely, the distinction between patent and copyright protection.

Unanimous Decisions by Courts Below.

Both the District Court and the Court of Appeals for the Seventh Circuit (Judges Major, Kerner and Swain) unanimously held that **ornamental designs for electric table lamps** were articles of manufacture for a utilitarian purpose, and may not be monopolized by copyright, but may be protected only by design patent issued by the U. S. Patent Office under 35 U.S.C.A. 73, Sec. 4929, 4933, Revised Statutes.

Question Presented.

May the Patent Office with its rigorous examination, and a possible monopoly of 14 years, be circumvented, and a monopoly obtained for the asking, for a total period of 56 years, on an article of manufacture for a utilitarian purpose, namely, a design of an electric table lamp, through the means of a copyright perfunctorily registered in the Copyright Office?

Statutes Involved.

The Statutes with respect to Design Patents which embrace the instant case are Sections 4929 and 4933 of the Revised Statutes (35 U.S.C.A. 73). They provide that, "Any person who has invented any new, original and ornamental design for an article of manufacture * * * may * * * obtain a patent therefor." They are reprinted in full and discussed in detail on pages 6-10 *infra*.

Sec. 202.8 of the Regulations of the Copyright Office, (37 C.F.R. Chap. II) excludes from its orbit of authority the right to register any articles having mechanical or utilitarian aspects and is reprinted and discussed in

detail on page 10 *infra*. The Copyright Act under which the foregoing regulation is made is reproduced on pages 11-12 *infra*.

Statement of the Case.

Petitioner allegedly copyrighted two statuettes as "works of art", one being a female Balinese dancer and the other being a male Balinese dancer. Petitioner has not manufactured nor sold these figures as statuettes, but has manufactured and sold electric table lamps, complete with electrical sockets, electrical cords, shades, etc. with a figure forming the base of a lamp. Respondent has not manufactured nor sold such statuettes, but has sold only electric table lamps complete with electrical sockets, shades, etc. with a figure forming the base of a lamp.

ARGUMENT.

Procedures and Distinctions Between Obtaining a Copyright and a Design Patent.

The Copyright Office, under the jurisdiction of the Library of Congress, upon the filing of an application for copyright registration and the payment of a $4.00 filing fee, in a matter of several days will perfunctorily issue a certificate of copyright effective for a term of 28 years. This may be perfunctorilly renewed for another like term, making a total monopoly of 56 years. The Copyright Office conducts no examination to determine the existence of originality, novelty or inventiveness in the subject matter. (See *Burrow-Giles Lithographic* v. *Sarony* 111 U.S. 53, 59, pages 9, 10 *infra.*) In effect the Copyright Office acts merely as a recording office, recording everything filed.

The United States Patent Office upon the filing of an application for a design patent including a drawing of the design, a description thereof and claim therefor, conducts a critical examination through all of the pertinent prior art to determine whether the design is new, original, ornamental and **possesses the quality of invention.** If these questions are determined in the affirmative, the Patent Office then may issue a design patent for a term of either 3½, 7 or 14 years, depending upon the fee paid. **Design patents are not renewable** and the designs become public property after the patent expires.

Design Patents Only, Not Copyrights, Protect Designs for Articles of Manufacture.

The design in question being for an electric table lamp may be protected only by means of a design patent and not by a copyright registration. Sections 4929 and 4933 of the Revised Statues (35 U.S.C. 73) dealing with design patents are as follows:

> "Any person who has invented any new, original, and **ornamental design for an article of manufacture,** not known or used by others in this country before his invention thereof and not patented or described in any printed publication in this or any foreign country before his invention thereof, or more than one year prior to his application thereof and not in public use or on sale in this country for more than one year prior to his application, unless the same is proved to have been abandoned, may, upon payment of the fees required by law and other due proceedings had, the same as in cases of inventions or discoveries covered by Section 31 of this title, **obtain a patent therefor.**"
>
> "All the regulations and provisions which apply to obtaining or protecting patents for inventions or discoveries not inconsistent with the provision of this title, shall apply to patents for designs. (R.S. Secs. 4929, 4933; May 9, 1902, ch. 783, 32 Stat. 193; Aug. 5, 1939, ch. 450, sec. 1, 53 Stat. 1212.)" (Emphasis supplied)

The Supreme Court in the leading case of *Gorham* v. *White*, 81 U.S. 511, 524, stated:

> "It is a **new and original design for a manufacture,** whether of metal or other material, **a new and original design for a bust, statute,** bas relief, or composition in alto or basso relieva; a **new or original impression or ornament to be placed on any article of manufacture** * * * or **a new or original shape or configuration**

> **of any article of manufacture**—it is one or all of these that the law has in view. And the thing invented or produced, for which **a patent is given,** is that which gives a peculiar or distinctive appearance to the manufacture, or article to which it may be applied, or to which it gives form." (Emphasis supplied)
>
> See also *Smith* v. *Whitman,* 148 U.S. 674.

The *Gorham* case is still the leading authority on this subject and has never been overruled nor superseded and is constantly relied upon by the Courts in current opinions.

The section of the Patent Laws dealing with infringement of design patents provides in part as follows:

35 U.S.C.A. Sec. 75:

> "During the term of **letters patent for a design,** it shall be unlawful for any person other than the owner of said letters patent, without a license of such owner, **to apply the design** secured by such letters patent, or any colorable imitation thereof, **to any article of manufacture** for the purpose of sale, or to sell or expose for sale any **article of manufacture** to which such design or colorable imitation shall, without the license of the owner, have been applied, knowing that the same has been so applied." (Emphasis supplied)

The United States Patent Office, since the first design patent act in 1842, has granted **design patents on articles of manufacture.** To illustrate this long standing practice, a few representative design patents issued by the Patent Office are contained in the Record page 28 to 40 inclusive. Various bases and designs for table lamps are shown therein.

The Courts, throughout the country and in the various circuits, have long recognized that design patents are

the media by which articles of manufacture may be protected, and, in passing on the validity of a design patent, have uniformly applied the test of patentability, namely, in order for a design patent to be valid, in addition to being new and ornamental, it must involve invention. A few representative cases are herewith cited:

First Circuit

National Automatic v. *Automatic Machinery,* 111 F. 401

Illinois Watch Case v. *Hingeco Mfg. Co.,* 81 F. (2) 41

Second Circuit

Neufeld-Furst & Co. v. *Jay-Day Frocks,* 112 F. (2) 715

Gold Seal Importers v. *Morris-White,* 124 F. (2) 141

Third Circuit

Phoenix Knitting v. *Hygienic,* 194 F. 696

Rose Mfg. Co. v. *Whitehouse,* 208 F. 564

Fourth Circuit

Robertson, Com. of Patents v. *Cooper,* 46 F. (2) 766

Connecticut Paper v. *N. Y. Paper,* 127 F. (2) 423

Sixth Circuit

Western Auto Supply Co. v. *American National Co.,* 114 F. (2) 711

CAVU Clothes v. *Squires,* 184 F. (2) 30

Seventh Circuit

Heuter v. *Compco,* 179 F. (2) 416

Associated v. *Gits,* 182 F. (2) 1000

Eighth Circuit

King Ventilating Co. v. *St. James Ventilating*, 26 F. (2) 357

Ninth Circuit

Magarian v. *Detroit Products*, 128 F. (2) 544

Faris v. *Patsy Frock*, 273 F. 900

There is no conflict between the decisions of any of the Circuit Courts of Appeal that designs for articles of manufacture *may* be protected only by *design patents* under the PATENT LAWS, and that in order to sustain validity of a design patent, *invention* must be involved.

In this case, Petitioner alleges that any one can obtain for himself a monopoly merely by ignoring the Patent Office and doing business with the Copyright Office of the Library of Congress. Petitioner provides self-serving evidence of monopolies on designs for electric table lamps, as well as for other products such as toy banks, jewelry, cemetery memorials, plates and dishes, salt shakers, dolls, jars, etc. Petitioner is setting up the Copyright Office as a cut-rate competitor of the Patent Office.

This Court, in *Burrow-Giles Lithographic* v. *Sarony*, 111 U.S. 53, pointed out that there is a distinction between the issuance of a patent and a copyright, stating: p. 59:

> "In regard, however, to the kindred subject of patents for invention, they cannot by law be issued to the inventor until the novelty, the utility, and the actual discovery or invention by the claimant have been established by proof before the Commissioner of Patents; and when he has secured such a patent, and undertakes to obtain redress for a violation of his right in a court of law, the question of invention,

> of novelty, of originality, is always open to examination. Our copyright system has no such provisions for previous examination by a proper tribunal as to the **originality of the book, map or other matters offered for copyright.** A deposit of two copies of the article or work with the Librarian of Congress with the name of the author and its title page, is all that is necessary to secure a copyright." (Emphasis supplied)

"Works of Art" Under the Copyright Law Do Not Apply to Articles of Manufacture Having Mechanical and Utilitarian Aspects, Such As Electric Table Lamps.

Petitioner's alleged copyrights granted by the Library of Congress, do not give it a monopoly to enjoin the manufacture, use and sale of electric table lamps.

Petitioner's brief, page 3, quotes Regulation, Sec. 202.8 of the Copyright Office which reads as follows:

> "Sec. 202.8 Works of Art (Class G)—(a) In general. This class includes works of artistic craftsmanship, insofar as their form but **not their mechanical or utilitarian aspects are concerned,** such as artistic jewelry, enamels, glassware, and tapestries, as well as all works belonging to the fine arts, such as paintings, drawings and sculpture. * * *" 17 U.S.C. foll. sec. 207 (Emphasis supplied)

The very wording of the above regulation which was promulgated by the Copyright Office itself, indicates clearly that the Copyright Office excludes from its orbit of authority any right to grant monopolies on articles which have **mechanical or utilitarian aspects,** such as the electric table lamps here under consideration.

Both Courts below found no difficulty in interpreting this regulation. In fact, the Court of Appeals below quotes this regulation in its opinion (R. 58). No court in any other circuit has interpreted it otherwise. It has

always been the practice to protect articles of manufacture having mechanical and utilitarian aspects and possessing a new, original and ornamental design of inventive character, only by design patents and not by copyrights.

That the copyright laws are intended to protect those things which are printed and published for information and not for use in themselves, is clear, and dates back to the passage of the first COPYRIGHT ACT of May, 1790, which was entitled:

> "An act for the encouragement *of learning* by securing the copies of *maps, charts* and *books* to the Authors, to the Proprietors of such copies, during the time therein mentioned." (Emphasis supplied)

The first section of this act dealt with authors or proprietors of books and used the following language:

> "Any other person being a citizen of the United States who had purchased or legally acquired the copyright of such book, in order to **print, reprint, publish** or **vend** the same, shall have the sole right and liberty of printing, reprinting, publishing and vending the same." (Emphasis supplied)

The above emphasized words are contained in Title 17, Sec. I of the present COPYRIGHT ACT.

From the nature of the rights granted by the present COPYRIGHT LAW, it is clear that the law does not contemplate covering an article of manufacture having a utilitarian purpose.

Title 17, Sec. 1 of the present COPYRIGHT LAW provides that a copyright owner shall have the exclusive rights to

> (a) "To *print, reprint, publish, copy* and *vend* the copyrighted work,"

(b) "To translate the copyrighted work into other languages," etc.

(c) "To deliver or authorize the delivery of the copyrighted work in public for profit, if it be a lecture, sermon, address or similar production."

(d) "To perform or represent the copyrighted work publicly, if it be a drama, or," etc.

(e) "To perform the copyrighted work publicly for profit, if it be a musical composition;" etc.

Section 10 of the present COPYRIGHT ACT provides:

"**Publication** of Work with Notice.—Any person entitled thereto by this title may secure copyright for his work by **publication** thereof with the notice of copyright."

Section 13 of the present COPYRIGHT ACT provides:

"Deposit of Copies After *Publication*, Action or Proceeding For Infringement.—After copyright has been secured by *publication* * * * there shall be promptly deposited in the Copyright Office or in the mail addressed to the Register of Copyrights, Washington, District of Columbia, two complete copies of the *best edition* thereof then *published, or if the work is by an author* who is a citizen or subject of a foreign state or nation", etc. (Emphasis supplied)

From the foregoing provisions of the present COPYRIGHT LAW it is clearly evident that nowhere are words used which would be applicable to an article of manufacture having a utilitarian purpose, such as an electric table lamp. The words **print, reprint, publish, copy** and **vend** in Sec. 1; the word **publication** in Sec. 10, and the words **publication, best edition, published, author,** in Section 13, are words clear in their intent and meaning

and are in conformity with the words contained in the Constitutional provision* which were intended to relate to copyrights, namely, *"Authors"* and *"Writings"*.

The words *print, reprint, publish* or *vend* are the same words used in the first copyright act of 1790, which was entitled, "An Act for the encouragement of *learning* by securing the copies of maps, charts and books to the *Authors,* to *Proprietors* of such copies." (Emphasis supplied throughout.)

Obviously, an electric table lamp can not be "printed" or "published". It cannot be a "publication" and is not created by an "author", nor can "editions" be filed.

The Supreme Court in the TRADE MARK cases, 100 U.S. 82, stated:

> "And while the writings may be liberally construed, as it has been, to include original designs for engraving, prints, etc., it is only such as are original, and are founded in the creative powers of the mind. The *writings* which are to be protected are the fruits of intellectual labor, embodied in the form of *books, prints, engravings and the like."* (Emphasis supplied.)

The Supreme Court in *Baker* v. *Seldon,* 101 U.S. 99, pointed out the distinction between copyrights and pat-

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* Constitutional provision governing patents and copyrights, Article I, Sec. 8, Clause 8, "to promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries."

The historical background leading to the adoption of this provision of the Constitution makes it clear that the words 'science', 'authors' and 'writings' are related in the context and the words 'useful arts', 'inventors' and 'discoveries' are similarly related in the context. See also Burrow-Giles v. Sarony, 111 U.S. 53, infra p. 14.

ents and held that the *object of a copyright is explanation and the object of a patent is use.*

The Court stated:

> (p. 102)—"A treatise on the composition and use of medicines, be they old or new, on the construction and use of ploughs, or watches, or churns; or on the mixture and application of colors for painting or dyeing; or on the mode of drawing lines to produce the effect of perspective, would be the subject of copyright; *but no one would contend that the copyright of the treatise would give the exclusive right to the art or manufacture described therein.* • • •
>
> To give the author of the book an exclusive property in the art described therein, when no examination of its novelty has ever been officially made, would be a surprise and a fraud upon the public. That is the province of letters patent, not of copyright. *The claim to an invention or discovery of an art or manufacture must be subjected to the examination of the Patent Office before an exclusive right therein can be obtained; and it can only be secured by a patent from the government.*
>
> • • •
>
> (p. 105)—The description of the art in a book, though entitled to the benefit of a copyright lays no foundation for an exclusive claim to an art itself. *The object of the one is explanation; the object of the other is use. The former may be secured by copyright. The latter can only be secured, if it can be secured at all, by letters patent.*" (Emphasis supplied.)

The Supreme Court in *Burrow-Giles* v. *Sarony,* 111 U.S. 53, a case dealing with the question as to whether a photograph was subject to copyright, considered the interpretation of the words "authors" and "writings" in the Constitution in their relation to the copyright laws and stated:

(p. 56)—"The eighth section of the first Article of the Constitution is the great repository of the powers of Congress, and by the eighth clause of that section Congress is authorized:

> 'To promote the progress of science and useful arts, by securing, for limited times to *authors* and inventors the exclusive right to *their respective writings* and discoveries.'

"The argument here is, that a photograph is not a writing nor the production of an author. Under the acts of Congress, designed to give effect to this section, the persons who are to be benefited are divided into **two classes, authors and inventors.** The monopoly which is granted to the **former** is called a **copyright,** that given to the **latter, letters patent,** or, in the familar language of the present day, patent right.

* * *

> 'According to the practice of legislation in England and America' says Judge Bouvier, 2 Law Dictionary, 363, **'the copyright is confined to the exclusive right secured to the author or proprietor of a writing or drawing which may be multiplied by the arts of printing in any of its branches.'**

(p. 58)—"By writings in that clause is meant the literary productions of those authors, and Congress very properly has declared these to include all forms of writings, printing, engraving, etching, etc., by which the ideas in the mind of the author are given visible expression." (Emphasis supplied.)

The Supreme Court in *Perris* v. *Hexamer,* 99 U.S. 674, stated:

> (p. 675)—"A copyright gives the author or the publisher the exclusive right of multiplying copies of what he has written or printed."

The decisions of this Court are clear on what may comprise the subject matter of a copyright. Clearly such sub-

ject matter does not embrace a design for electric table lamps which design may be protected, if at all, only by design patents. The regulation of the copyright office hereinbefore quoted makes this clear.

The Court of Appeals for the Seventh Circuit (Judges Minton, Major and Lindley) in *Taylor Instrument Co.* v. *Fawley-Brost Co.,* (1943) 138 F. (2d) 98, in reviewing the distinctions between copyrights and patents held that **an object of use is subject to patent protections and not to copyright protection,** that there can be **no overlapping between copyrights** and **patents,** and that protection must be found in one or the other, it cannot be found in both. Certiorari was denied in 321 U.S. 785.

The instant case which decided the same question is merely a reaffirmation of the *Taylor* case.

H. A. Howell, formerly Assistant Register of Copyrights, a recognized authority on copyright practice, in his book entitled, "The Copyright Law" published in 1948, classifies what may be copyrighted and what may be the subject of a design patent. His classification would place an electrical table lamp under the applied arts which may be protected only through the medium of a design patent. He states:

> (p. 20)—"Works of art may for the most practical purposes be divided into four classes" (see *United States* v. *Perry,* 146 U.S. 71 (1892)
>
> • • •
>
> "(4) Objects primarily designed for a useful purpose, but made ornamental to please the eye and gratify the taste, such as ornamental clocks, curtains, rugs, gas fixtures, household furniture, etc., commonly called applied art."

"Not all of these classes, however, would come within the scope of the existing copyright law. **Congress has provided otherwise for No. (4)** in Section 4929 of the Revised Statutes to the effect that 'any person who has invented any new, original and ornamental design for an article of manufacture'' may on certain conditions **obtain a patent therefor;** and hence the registration of such a design would come within the jurisdiction of the **Patent Office** whenever the **finished product is an article of utility, however artistic in appearance it may be.**'' (Emphasis supplied)

Cases Cited by Petitioner.

Petitioner attempts to make it appear that the decision below conflicts with the decisions of the Court of Appeals for the Second Circuit in *Fleischer Studio* v. *Freundlich* (1934) 73 F. (2) 276, and *King Feature Syndicate* v. *Fleischer,* (1924) 299 F. 533. As will be seen by reference to the decisions of the Court of Appeals for the Second Circuit on p. 8, *supra,* the Court there held that designs for articles of manufacture may be protected by design patents and that such designs must involve invention.

In the *Fleischer* case relied upon by Petitioner, the plaintiff there had created a new cartoon character known as "Betty Boop." This character had been exhibited in motion picture cartoons and had become very popular and widely known, In addition, Plaintiff's licensee had sold large quantities of "Betty Boop" dolls. The Court there said:

> (p. 278)—"What the appellant constructed is recognizable by an ordinary observor as having been taken from the copyrighted source. Such is infringement."

In the *King Feature* case, the plaintiff had created cartoon characters known as "Barney Google", and "Spark Plug" or "Sparky", a horse. The plaintiff had published his cartoons and had syndicated them to newspapers throughout the country with wide circulation, running into millions, where they appeared daily as comic strips. Defendants manufactured a toy horse which was copied after plaintiff's cartoon character, "Spark Plug" and, in addition, labeled it and sold it as "Spark Plug" and "Sparky." The Court held that this was an infringement of plaintiff's rights.

Neither of these cases is pertinent to the question presented here, nor can the facts therein be compared to the present case.

Petitioner was not the first to create Balinese figures and those here in issue can in no way be said to be unique. The use of male and female Balinese dancing figures for decorative purpose has been common for many years, as will be seen by reference to the Record, pages 46-50.

Petitioner's Balinese figures here in issue have not been publicized nor sold in any great quantity, such as to make them "recognizable by an ordinary observor as having been taken from the copyrighted source."

Petitioner would like to leave the impression that these two cases decide something other than what was actually decided. We believe that a later decision of the District Court of New York very clearly and succinctly points out, what these cases truly determine. The Court in *Adelman, Inc.* v. *Sonner's & Gordon,* 21 U.S.P.Q. 218, stated:

(p. 219)—"The plaintiff urges that *King Feature Syndicate* v. *Fleischer et al.* (299 Fed., 533, C.C.A. 2) supports its contention. In fact, this case is its chief reliance. In that case the plaintiff was the owner of a copyrighted picture consisting of cartoons and comic sketches depicting a horse—'Spark Plug'—and a male character, 'Barney Google', in a variety of ludicrous situations. The defendant manufactured and sold a grotesque figure and toy exactly reproducing 'Spark Plug.' The court held that the defendant infringed the plaintiff's copyright. *These articles were entirely lacking in any functional use; they served no utilitarian purpose; their form was the essence of the article, and the court pointed out that the toy horse 'Spark Plug' was nothing more than a glorified cartoon.*"

* * *

"*King* v. *Fleischer* does not depart from the rule of *Baker* v. *Seldon, supra.* On the contrary, it cites and recognizes the rule in *Baker* v. *Selden.* As I read it, it merely holds that in this particular instance the reproduction of the defendant's was essentially a copy of plaintiff's cartoon or comic sketch. *It certainly could not even be inferred from King* v. *Fleischer that if a person copyrighted a design for a 'stream line' automobile the copyright owner would have the exclusive right to produce such an automobile, or that the copyright owner of a drawing of a dress would have the exclusive right to produce the dress. It merely applied the old rule, but perhaps to an unusual set of facts.*" (Emphasis supplied.)

Subsequent to the above decisions of the Court of Appeals in the Second Circuit, in the *King Feature* and *Fleischer* cases, the same Court in *Jackson* v. *Quickslip Co.,* 110 F. (2) 731 (C.C.A. 2, 1940) held that toys are not copyrightable. The Court stated, page 732:

> "*There is no copyright for toys,* badges, or similar apparatus alone or fastened to a book. Rule 12, Copyright Rules 17 U.S.C.A. following Section 53, *Royal Sales* v. *Gaynor,* 164 F. 207; *Hollinrake* v. *Truswell* (1894) 3 Ch. 420."

Any conflict in decisions which petitioner attempts to show disappears into thin air when the cases are studied.

In *Jones Bros. Co.* v. *Underkoffler,* 16 F.S. 729 (M.D. Pa., 1936) the District Court held that a copyright of a design for a cemetery monument was infringed by the physical monument. The decision in this case was not presented to an appellate tribunal for review.

In re Blood, 23 F. (2d) 772, (App. D.C. 1927) the copyright in question involved an ornamental design for a printed hosiery ticket.

In *DeJonge & Co.* v. *Breuker & Kessler Co.,* 182 F. (2) 150 (C.C.E.D. Pa.; 1910) the copyright involved a painting and its printed reproductions.

In *Bleistein* v. *Donaldson,* 188 U.S. 239 (1903), the Plaintiffs had copyrighted three chromolithographs or pictorial illustrations used in advertisements for a circus. The Supreme Court held that circus advertisements are within the protection of the Copyright Laws. Clearly this case supports Respondent's position that the Copyright Laws protect only printed matter in whatever form produced and not articles of manufacture, such as electric table lamps which have utilitarian and mechanical aspects.

CONCLUSION.

The Patent (design) and Copyright Laws and practice thereunder are clear. Congress never intended to nullify the possible monopoly of 14 years on designs from the Patent Office with an unquestioned monopoly for the mere asking, running for 56 years. The Courts have never sanctioned such a legal short circuit.

If Petitioner is right, then the Patent Office may as well close up its design division. Why should any one go there to face a possible refusal when he can get positive action in his favor from the Copyright Office? If the two are in competition, as Petitioner alleges, then why should not every one go to the Copyright Office? He gets more with less trouble and at a lower cost.

It is respectfully submitted that the concurrent decisions of the Courts below are correct, and that this case does not merit review by this Court. Certiorari should be denied.

Respectfully submitted,

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